

CR No. 3656 of 2003

(1)

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CR No. 3656 of 2003

Date of Decision: 17.10.2007

Babu Ram

....Petitioner

Versus

Desso and another

....Respondents

Coram: Hon'ble Mr. Justice Hemant Gupta.

Present: Shri Ashish Aggarwal, Advocate, for the petitioner.

Shri C.B. Goel, Advocate, for the respondent.

HEMANT GUPTA, J.

The challenge in the present revision petition is to the order passed by the learned trial Court on 7.4.2003, whereby a sum of Rs.2000/- per month was awarded as interim maintenance to the daughter of the present petitioner, from the date of filing of the application.

The divorced wife of the present petitioner filed a suit claiming maintenance under Section 18 of the Hindu Adoption and Maintenance Act, 1956 (for short 'the Act') for herself and the minor daughter of the parties. It was pointed out that the marriage between the petitioner and plaintiff No.1 was dissolved by a decree of divorce on 27.10.1984 and that she is getting a sum of Rs.400/- per month as maintenance, whereas Rs.200/- per month is the maintenance granted to plaintiff No. 2. It is pointed out that the plaintiffs are not possessed of sufficient means and thus, sought maintenance in terms of Section 18 of the Act.

The Court found that in terms of Section 21 of the

Act, a Hindu is duty bound to provide maintenance to his unmarried daughter and to provide the maintenance is a legal obligation of a father. Therefore, the daughter was found entitled to claim maintenance from the present petitioner. Keeping in view the expenses likely to be incurred by plaintiff No. 2, a sum of Rs.2000/- per month was awarded as maintenance from the date of application.

Learned counsel for the petitioner has vehemently argued that in fact, plaintiff No. 2 is a major and therefore, she has been wrongly sued as a minor in a suit for maintenance under Section 18 of the Act. It is argued that while granting maintenance, the Court has not taken into consideration the amount of maintenance awarded to plaintiff No. 2 in the proceedings Section 125 of the Code of Criminal Procedure.

During the course of hearing of the revision on 21.2.2005, learned counsel for the plaintiff-respondent pointed out that it was on account of mistake that plaintiff No. 2 was reflected as a minor and that in fact, she is a major and entitled to maintenance under the provisions of the Act. The case was adjourned to enable the respondent to file an affidavit to the effect that the daughter is the one who has sought maintenance under the provisions of the Act. An affidavit dated 1.9.2005 has been filed, pointing out that she is 23 years of age having born on 10.11.1982 and that the mother of the deponent by mistake has shown the deponent to be a minor. It is asserted that the deponent herself is claiming maintenance from her father and it is she who has to receive the amount of maintenance. It is also pointed out that the petitioner has not paid even a single penny to the deponent.

The mistake in impleading plaintiff No. 2 as minor

is inconsequential. Plaintiff No. 2 is major and has sought maintenance for herself, which is evident from the affidavit filed in the Court. As an unmarried daughter, plaintiff No. 2 is entitled to maintenance till such time, she is dependent upon her father. Therefore, the argument raised by the learned counsel for the petitioner that plaintiff No. 2 is minor and she is not the one who has sought the maintenance, cannot be sustained.

However, the argument that the amount of maintenance awarded to plaintiff No. 2 in the proceedings under Section 125 of the Code of Criminal Procedure is required to be adjusted, requires some consideration.

Thus, the order dated 7.4.2003 is modified and it is ordered that if the petitioner deposits a sum of Rs.2000/- per month as ad-interim maintenance from the date of application filed before the trial Court within a period of 3 months, the amount of Rs.200/- p.m. granted as a maintenance under Section 125 of the Code of Criminal Procedure, shall be deemed to be paid in these proceedings for the said corresponding period. If the amount @ Rs.2000/- per month from the date of the application, is not paid within the period prescribed, the respondent shall be entitled to recover such amount @ Rs.2000/- from the date of the application along with the amount of Rs.200/- p.m. granted in the proceedings under Section 125 of the Code of Criminal Procedure.

Disposed of in the above terms.

17-10-2007
ds

(HEMANT GUPTA)
JUDGE